

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No.63487-9-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
TIMOTHY TED PHILLIPS,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: June 7, 2010
_____)	

PER CURIAM. Timothy Phillips appeals the judgment and sentence and order of restitution entered following his convictions for first degree theft and four counts of forgery. His counsel on appeal contends, and the State concedes, that the instructions on the theft count allowed the jury to convict him of an uncharged offense, that the error was not harmless, and that the theft conviction and order of restitution must be reversed. We accept the concession.

Phillips raises several claims regarding his trial counsel's performance in a pro se statement of additional grounds for review. These claims either involve matters outside the record, State v. McFarland, 127 Wn.2d 322, 335, 338 n. 5, 899 P.2d 1251 (1995) (matters outside record must be raised in personal restraint petition), are insufficiently argued, see RAP 10.10(c), State v. Elliott, 114 Wn.2d 6, 15, 785 P.2d 440 (1990), State v. Marintorres, 93 Wn. App. 442, 452, 969 P.2d 501 (1999), or pertain to the theft count or restitution order and are therefore moot given our acceptance of the State's concession.

No. 63487-9-1/2

Accordingly, we reverse the theft conviction and restitution order and remand for proceedings consistent with this opinion.

For the court:

Spencer, J.

Dwyer, C. J.

Becker, J.